

3-6-2014

# State v. Big Dawg Bail Bonds Respondent's Brief Dckt. 41489

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	<b>Supreme Court</b>
vs.	)	<b>Docket No. 41489</b>
	)	
SUZANA MARIE CONNOR,	)	
	)	
Defendant-Respondent,	)	
	)	
and	)	
	)	
BIG DAWG BAIL BONDS,	)	
	)	
<u>Real Party in Interest-Appellant</u>	)	

RESPONDENT STATE OF IDAHO'S BRIEF

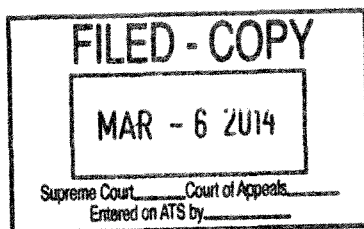
Appeal from the District Court of the Fourth Judicial District  
of the State of Idaho, in and for the County of Ada

\* \* \* \* \*

Honorable Richard D. Greenwood, District Judge, Presiding

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## TABLE OF CONTENTS

STATEMENT OF THE CASE .....	1
I.    NATURE OF THE CASE .....	1
II.   COURSE OF THE PROCEEDINGS .....	1
STANDARD OF REVIEW .....	4
ARGUMENT .....	5
THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY SETTING ASIDE THE BOND FORFEITURE AND EXONERATING \$29,000 OF THE \$50,000 BOND BECAUSE IT THOROUGHLY EXAMINED THE FACTS AND BIG DAWG HAS FAILED TO DEMONSTRATE LEGAL ERROR IN THE COURT’S APPLICATION OF THE APPLICABLE LEGAL PRINCIPLES TO THOSE FACTS .....	5
I.    The District Court Did Not Abuse Its Discretion in Considering the Rule 46(h) Factors and Other Facts.....	6
A.    The Bail Agent’s Efforts in Locating and Apprehending the Defendant – Idaho Crim. R. 46(h)(1)(B).....	6
B.    Cost, Inconvenience, and Prejudice to the State – Idaho Crim. R. 46(h)(1)(C).....	11
C.    Intangible Costs – Idaho Crim. R. 46(h)(1)(D) .....	11
D.    The Public Interest in Ensuring the Defendant’s Presence – Idaho Crim. R. 46(h)(1)(E).....	12
E.    Mitigating Factors – Idaho Crim. R. 46(h)(1)(F) .....	12

F.	Deterrence – Idaho Crim. R. 46(h)(1)(I) .....	13
II.	The Court Should Reject Big Dawg’s Call to Ignore the Statutes and Rules Governing Motions to Set Aside Bond Forfeitures in Favor of Common-Law Contract Rules .....	14
CONCLUSION.....		14

## TABLE OF CASES AND AUTHORITIES

### Cases

<i>Kirkland v. Blaine County Med. Ctr.</i> , 134 Idaho 464, 4 P.3d 1115 (2000) ....	14
<i>State v. Quick Release Bail Bonds</i> , 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007) .....	4
<i>State v. Two Jinn, Inc.</i> , 151 Idaho 725, 264 P3d 66 .....	4, 14
<i>Taylor v. McNichols</i> , 149 Idaho 826, 243 P.3d 642 (2010) .....	4

### AUTHORITIES

#### Idaho Code

Idaho Code § 19-2913 .....	9
Idaho Code § 19-2913(1) .....	9
Idaho Code § 19-2914 .....	9
Idaho Code § 19-2915(2) .....	2, 7
Idaho Code § 19-2917 .....	6, 14
Idaho Code § 19-2922 .....	4
Idaho Code § 19-2922(2) .....	8
Idaho Code § 73-108 .....	7

#### Idaho Criminal Rule

Idaho Crim. R. 46 .....	14
Idaho Crim. R. 46(h) .....	5, 6
Idaho Crim. R. 46(h)(1)(B) .....	6
Idaho Crim. R. 46(h)(1)(C) .....	11
Idaho Crim. R. 46(h)(1)(D) .....	11
Idaho Crim. R. 46(h)(1)(E) .....	12
Idaho Crim. R. 46(h)(1)(F) .....	12
Idaho Crim. R. 46(h)(1)(I) .....	13

## **STATEMENT OF THE CASE**

### **I. Nature of the Case**

Nobody seems to know for sure where Suzana Connor went. She had been arrested for felony DUI, and Big Dawg Bail Bonds posted her \$50,000 bail. She had attended previous hearings, but didn't show as scheduled for a January 15, 2013 hearing, and so the hunt was on. Big Dawg followed leads to a Hare Krishna church in Los Angeles and then back to Boise, but ultimately, it seems, Connor may have found her way to India, which makes her prosecution somewhat more difficult.

Shortly after the notice of bond forfeiture and arrest warrant issued, Big Dawg sought to have the forfeiture set aside and the bond exonerated. The district court set aside the forfeiture in part, exonerating \$29,000 of the \$50,000. Big Dawg complains here that the district court and Ada County sheriff fumbled the process and so the bond should be fully exonerated.

### **II. Course of Proceedings and the Facts**

The arrest that led this case to this Court happened on June 3, 2012. (CR p. 98.) Connor bailed out on July 14 and was released. (CR p. 2.) When she failed to attend a hearing on January 15, 2013, the district judge ordered her bail forfeited and that an arrest warrant issue. (CR p. 67.) The notice of forfeiture was mailed to the bail agent's insurance company on January 23, five business days after Connor's failure to appear,

which is what I.C. § 19-2915(2) requires. (CR p. 71.) The district judge signed the bench warrant the next day.

Big Dawg filed a motion to set aside the bond forfeiture on January 31, claiming that the court failed to notify the bail agent (or insurance company; it's not clear from the motion) within five days of the failure to appear. (CR p. 72.) The district court conducted four hearings on the matter between February and July 2013. It issued a preliminary decision on April 22, 2013. In that decision, the court indicated it would defer deciding the motion until July 14, which concluded the 180-day period Big Dawg had to bring Connor in and have the bail reinstated. (CR p. 105.) The court issued a decision on August 26, 2013 setting aside the forfeiture to the tune of \$29,000. (CR p. 116.)

Kevin Elliot owns Big Dawg. He received a phone call from Connor's mother-in-law on January 12. She told him that "there were some things going on that were weird" that Elliot might want to look into. (Tr. p. 31.) He drove by the residence but "[e]verything seemed to be in order." (Tr. p. 34.) He "had eyes on them" and was 95 per cent confident he could have hauled Connor in on the 15th. (Tr. p. 20.) He decided not to bring her in, though, because he had heard that the mother-in-law wanted custody of Connor's children and didn't want to get in the middle of that. (Tr. pp. 33-34.) He also

didn't want to show up and check in because in his experience, when a bondsman does that, defendants "think something is up and they start ditching and diving." (Tr. p. 36.)

Big Dawg got the notice of forfeiture from its insurance company on January 28. (CR p. 101). Elliot went out to Connor's mother's house that day and saw Connor's car, but not her. (Tr. pp. 38-39.) Even with the notice of forfeiture having been received, Elliot did not make contact because he did not want Connor to know he knew where her mother lived. (Tr. p. 38.) Even though the warrant had issued on January 24, Elliot made no effort to locate and arrest Connor between January 28 and 31. (Tr. p. 41.) Elliot started looking for Connor again on January 31. He went to Connor's mom's house, and the kids' schools, but it's unclear what exactly he found.

Between then and August 2013, Elliot was on the trail. A Facebook page led Elliot to think Connor might have fled to a Hare Krishna community in southern California. (Tr. p. 86.) Elliot spent seven days in southern California looking for her, but ultimately learned that she had not, in fact, been there. (Tr. p. 87.) Back in the City of Trees, Elliot located Connor's ex-husband and bond co-signer, a Mr. Grindle. (Tr. p. 87.) There was no sign of Connor at Grindle's residence. (Tr. p. 88.) Elliot stuck a GPS device on Grindle's car and followed his moves to a Hare Krishna church in Boise. (Tr. pp. 88-89.)



At the Hare Krishna church in Boise, Elliot learned that Connor might have gone to India. (Tr. p. 89.) Elliot confronted Grindle about this and Grindle told Elliot that Connor was out of the country. (Tr. p. 89.) At the August 2013 hearing on the motion to set aside the forfeiture, Elliot said he was 98.9 per cent sure she was in India. (Tr. p. 90). To date, Connor's whereabouts are a mystery.

### **STANDARD OF REVIEW**

The decision whether to set aside a bond forfeiture and exonerate the bond is a matter committed to the trial court's discretion; the inquiry on appeal, therefore, is whether the trial court abused its discretion in deciding whether to exonerate the bond.<sup>1</sup> *State v. Quick Release Bail Bonds*, 144 Idaho 651, 655, 167 P.3d 788, 792 (Ct. App. 2007). This evaluation tasks the Court with determining whether the district court (a) correctly perceived the matter as discretionary; (b) acted within the "outer boundaries" of that discretion and consistently with the legal standards applicable to the specific choices available to it; and (c) reached its decision by an exercise of reason. *State v. Two Jinn, Inc.*, 151 Idaho 725, 728, 264 P.3d 66, 69 (quoting *Taylor v. McNichols*, 149 Idaho 826, 832, 243 P.3d 642, 648 (2010)).

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<sup>1</sup> There are some circumstances when exoneration of bail isn't a discretionary call. Idaho Code § 19-2922 directs that a court "shall order the bail exonerated" if any one of six events listed there occurs. Those six events aren't applicable here.

## **ARGUMENT**

**THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY SETTING ASIDE THE BOND FORFEITURE AND EXONERATING \$29,000 OF THE \$50,000 BOND BECAUSE IT THOROUGHLY EXAMINED THE FACTS AND BIG DAWG HAS FAILED TO DEMONSTRATE LEGAL ERROR IN THE COURT'S APPLICATION OF THE APPLICABLE LEGAL PRINCIPLES TO THOSE FACTS.**

After Big Dawg filed its motion to set aside the bond forfeiture, the district court conducted four evidentiary hearings and produced two written decisions evaluating the facts against the factors listed in Idaho Crim. R. 46(h) dealing with setting aside forfeitures. The district court explained how it weighed all the relevant facts and arrived at the decision to exonerate \$29,000 of the \$50,000 bond. On appeal, Big Dawg floats a breach-of-contract theory it says should apply to the remedy in lieu of the statutes and rules covering bond exoneration. There is, though, no basis to apply contract principles where there is a clear statutory and rule-based scheme for addressing bond exoneration. Big Dawg also barks at the district court's evaluation of the facts against the Rule 46 factors. This complaint, however, amounts to a simple disagreement with the district court's ultimate result, and the Court should reject the invitation to depart from the standard by which these discretionary decisions are reviewed. It is with this latter agreement we shall begin.

**I. The District Court Did Not Abuse its Discretion in Considering the Rule 46(h) Factors and Other Facts**

The plain words of the statute and rule governing motions to set aside bond forfeitures reflect a grant of broad discretion to the trial courts. Idaho Code § 19-2917 states that the court that ordered forfeiture may set the forfeiture order aside “in whole or in part, upon such conditions as the court may impose, as provided by rules adopted by the supreme court, if it appears that justice so requires.” Idaho Crim. R. 46(h) directs trial courts to consider “all relevant factors,” and lists nine non-mandatory and non-exclusive factors. Big Dawg posits that the district court did not give due weight to the Rule 46(h) factors, but as we will see, the district court evaluated them all, carefully weighed the facts, and arrived at a reasoned decision.

Big Dawg’s arguments may be disposed of as follows:

**A. The Bail Agent’s Efforts in Locating and Apprehending the Defendant—Idaho Crim. R. 46(h)(1)(B)**

Big Dawg first argues that the district court didn’t properly weigh Big Dawg’s attempts to apprehend the absconder. Appellant’s Br. 15-16; *see* Idaho Crim. R. 46(h)(1)(B). Actually, the district court cited the “great lengths” Big Dawg went to in an attempt to locate Connor. The court noted Big Dawg cooperated with law enforcement and took steps to find her. (CR p. 113.) Big Dawg faults the district court for not weighing the delay between the issuance of the warrant and the Ada County Sheriff

receiving it. Appellant's Br. 16. But the court wrote that the delay was a mitigating factor, though not conclusive, and explained the factors that were relevant to that determination: Big Dawg decided not to revoke the bond despite information that Conner might abscond. Big Dawg's witness, Elliot, said this was because he didn't want to confront her or get in the middle of a perceived custody battle. As the prosecution and the district court observed, this was a decision made by Big Dawg and isn't the State's fault. (CR pp. 115-16.)

Big Dawg complains about the time between Connor's non-appearance and the issuance of the notice of forfeiture and the bench warrant. The significance of this is overblown. Notice of the forfeiture must be mailed to the bail company within five business days of the order of forfeiture. I.C. § 19-2915(2). The order was signed and mailed on January 23. The district court ordered that bail be forfeited at the January 15 hearing. Even if the five-business-day period began running on January 15, the notice was still timely mailed. As the district court pointed out, the 15th was a Tuesday and the following Monday was a state holiday. I.C. § 73-108. January 23 was the following Wednesday, precisely five business days after the 15th. So the five-day requirement was met.

The warrant's timing does not justify full exoneration. There is no requirement that the warrant be transmitted to the bail agent. And unlike the notice of forfeiture,

which must be mailed to the bail agent within five days, the failure of which results in a mandatory exoneration, *see* I.C. § 19-2922(2), there is no requirement that if the warrant doesn't issue within a prescribed period the bail must be exonerated. This factor is therefore discretionary.

Big Dawg argues that since the warrant didn't issue on the 15th, it lost its chance to find Connor and haul her in. But here are some facts that are relevant to any consideration of the timing of the warrant's issuance: Big Dawg didn't attend the January 15 hearing or call Connor or do anything else on the 15th to find out whether she showed up. Such measures might be more inconvenient, but may have averted the problem.

Big Dawg actually received the notice of forfeiture from its insurance company on January 28. The court mailed the notice within five business days to the entity to which it was required to mail the notice. The statute creates a built-in five-day period between the failure-to-appear and when notice of the forfeiture has to be mailed. Notice would have arrived at a Boise address likely no sooner than the 24th, which is when the warrant issued and was therefore a matter of public record.

And we know that Elliot drove by Connor's mother's residence on the 28th and spotted Connor's car (but made no other attempts to nab her that day). So by Elliot's judgment, Connor had not fled Boise as of the 28th. Instead of apprehending her, even knowing she had failed to appear, Big Dawg did nothing. By this time, the warrant had

been active for four days. We know, too, that Big Dawg made no effort between January 28 and 31 to locate Connor. Elliot did check the Idaho Supreme Court's Repository Web site, which didn't show an active warrant until the 31st. But he didn't call the court.

Elliot testified that had he brought Connor in after forfeiture but before a warrant issues, he would have been arrested for kidnapping, since the bail agent loses its right to arrest the defendant once forfeiture happens. Big Dawg and the local prosecutor agreed that the Ada County Sheriff has a policy that once forfeiture occurs, a bail agent cannot arrest a person unless there is an active warrant. Idaho Code § 19-2913 provides that "[a]t any time before *forfeiture* of bail, a surety insurance company or its bail agent . . . may surrender the defendant to the sheriff," and if that happens, "the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court." I.C. § 19-2913(1) (emphasis supplied). However, Idaho Code § 19-2914 states that "[a]t any time before *the exoneration* of bail, the surety insurance company or its bail agent . . . may empower any person of suitable age and discretion to arrest the defendant at any place within the state by signing an affidavit extending such authority in a form approved by the supreme court." (Emphasis supplied.) So nothing should have stopped Elliot from acting pursuant to § 19-2914 after the bond was forfeited and before exoneration and arresting Connor.

Big Dawg de-emphasizes the fact that the warrant issued on January 24—four days *before* Elliot found Connor’s car at her mother’s place. The record demonstrates that after the 15th, Elliot made no efforts to contact the court to inquire about the situation, even though it was a matter of public record that Connor had failed to appear and even though Big Dawg retained the authority to arrest Connor. That the warrant didn’t find its way onto the Repository Web site or to the Sheriff’s office doesn’t mean Big Dawg didn’t have other means to find out if there was an active warrant. For example: Had Big Dawg followed up on the 15th, it would have then learned that their customer was a no-show. As bail agents, Big Dawg’s people would have then known that bond had been forfeited and that a warrant would be issuing. Big Dawg could have kept tabs on her and checked with the district court, rather than the perhaps more convenient Web sites of the Repository and Ada County Sheriff, to find the status of the warrant. When the warrant issued, Big Dawg could have gotten a copy, arrested the defendant, and presented it to the Sheriff when it delivered Connor.

The district court also noted that Big Dawg’s decision not to apprehend Connor stemmed from some Department of Insurance regulation Elliot said limited when he could revoke the bond. Those regulations weren’t cited specifically anywhere in the record (or in Big Dawg’s brief to this Court), and indeed, the Department of Insurance

rules, effective since 2011 (and appended to this brief), do not say anything about the conditions under which a bail agent may revoke bond.

**B. Cost, Inconvenience, and Prejudice to the State—Idaho Crim. R. 46(h)(1)(C)**

The district court wrote that the only cost, inconvenience, and prejudice to the State was the “obvious”: The State had to defend the motion to set aside the forfeiture and law enforcement spent time and effort to locate Connor. (CR p. 113.) The inconvenience to the State is also the fact that the defendant absconded to probably India, and the State is prejudiced because it cannot likely prosecute her for a felony DUI so long as she is an ocean and a continent away.

Big Dawg says, without much explanation or any authority, that this should be weighed against the State. But its argument on this point is a mere invitation to simply arrive at a different result than the district court. The inquiry isn’t whether one tribunal would have reached a different result—the inquiry is whether the court abused its discretion.

**C. Intangible costs—Idaho Crim. R. 46(h)(1)(D)**

The district court “decline[d] to speculate” on the intangible costs because no party introduced evidenced on what they might be. (CR p. 114.) Big Dawg nevertheless contends that the intangible costs are a lack of faith in the system . . . .” Appellant’s Br. p. 16. The intangible costs of Big Dawg’s customer absconding to India are that the



people of Idaho cannot bring Connor to justice because Big Dawg's customer is likely in India. Connor was released because Big Dawg guaranteed her presence for court with a \$50,000 bond. The State timely notified the bail agent's insurance company and Big Dawg always had the opportunity to arrest Connor, and so if anything, Big Dawg's lack-of-faith-in-the-system argument is unfounded.

**D. The Public's Interest in Ensuring the Defendant's Presence – Idaho Crim. R. 46(h)(1)(E)**

The court gave the public interest less weight than it might in say, a case involving a serial rapist or pedophile. (CR p. 114.) Nevertheless, there is certainly a significant public interest in bringing those charged with felony DUI to justice. As Big Dawg concedes, "[t]he public has a profound and vested interest in making sure that a defendant who regularly drives while intoxicated is brought to court." Appellant's Br. p. 16. Exactly: Fully exonerating the bond in this case defeats the public interest because it tells defendants and bail agents that felony DUIs are not that important.

**E. Mitigating Factors—Idaho Crim. R. 46(h)(1)(F)**

The district court noted these mitigating factors: (1) the bail agent's efforts to locate Connor; (2) the delay in the actual issuance of the warrant; and (3) the Ada County Sheriff's policy of not accepting a defendant after bail is forfeited. (CR p. 15.) Again, Big Dawg simply disagrees with the district court's resolution of these issues. It points to no facts the district court missed and offers no legal authority to displace the district

court's decision. This Court should decline Big Dawg's invitation to the Court to substitute its judgment for the trial court's.

**F. Deterrence—Idaho Crim. R. 46(h)(1)(I)**

As the district court pointed out, deterrence weighed against exoneration. (CR p. 115.) If those guaranteeing the presence of a person are entitled to full exoneration of the bail as Big Dawg seeks here, bail will lose its deterrence factor because, as the district court reasonably observed, “[i]t will send a message to bonding companies that there is less need to carefully screen and monitor those for whom bond is posted.” (CR p. 115.)

\* \* \*

After reviewing all the relevant facts, the district court exonerated the bond to well more than half of the original amount. This figure included amounts Elliot testified were direct costs in Big Dawg's hunt for Connor. It reflected the district court's judgment that there were things both the State and Big Dawg could have done differently. Under the abuse-of-discretion standard, mere disagreements by a party with the trial court's reasoned application of the relevant principles of law to the relevant facts in the record do not justify reversal. Whether a reviewing court might arrive at a different conclusion, an appellate court's task in reviewing discretionary decisions by the trial courts is not to reweigh all the evidence and substitute its judgment. That is what Big Dawg asks this Court to do on appeal, and the Court should reject the request.

## **II. The Court Should Reject Big Dawg's Call to Ignore the Statutes and Rules Governing Motions to Set Aside Bond Forfeitures in Favor of Common-Law Contract Rules**

Big Dawg argues that the warrant was unjustifiably delayed, and so the State breached its contract between Big Dawg and the State. Appellant's Br. pp. 10-11. Existing law, Big Dawg continues, is written into that contract. "[D]ue to the delay, Big Dawg could not perform [its] end of the contract." But rather than following the statutory and rule-based provisions governing motions to set aside bond forfeitures, Big Dawg contends the Court should afford it common-law contract remedies. Appellant's Br. p. 11.

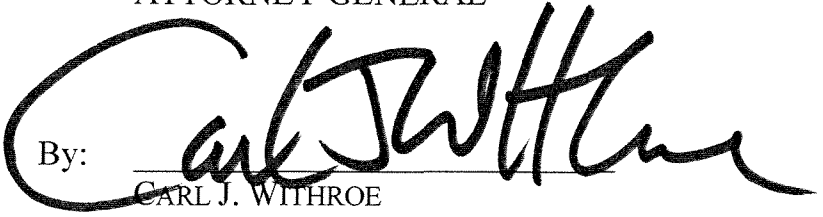
Big Dawg is right that existing law is part of the contract. *Two Jinn*, 151 Idaho at 728, 264 P.3d at 69. But its conclusion is exactly backwards. While contract principles may apply to the parties' performance of the bail agreement, I.C. § 19-2917 and Idaho Crim. R. 46 unmistakably supply the manner in which courts must evaluate motions to set aside bond forfeitures. *Kirkland v. Blaine County Med. Ctr.*, 134 Idaho 464, 4 P.3d 1115 (2000) (Legislature has authority to limit remedies for a cause of action). Big Dawg has provided no authority or reason for the Court to ignore the established rules governing motions to set aside bond forfeitures.

### **CONCLUSION**

The district court's judgment should be affirmed.

DATED this 6th day of March, 2014.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

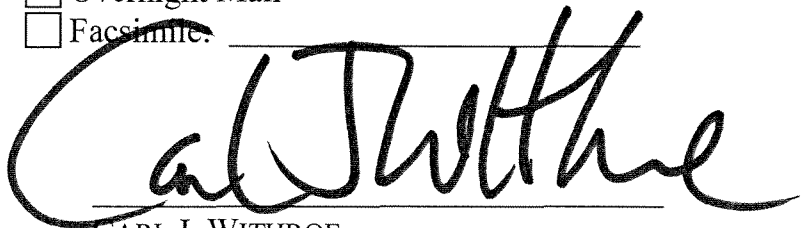
By:   
CARL J. WITHROE  
Deputy Attorney General  
Attorneys for Respondents

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2014, I caused to be served a true and correct copies of the foregoing RESPONDENT'S BRIEF by the following method to:

Aaron J. Tribble  
Eagle Law Center, LLC  
1191 E. Iron Eagle Drive, Suite 200  
Eagle, ID 83616

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile

A large, stylized handwritten signature in black ink, appearing to read 'Carl J. Withroe', is written over a horizontal line.

CARL J. WITHROE  
Deputy Attorney General

# APPENDIX

# ***Table of Contents***

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## **18.01.04 - Rules Pertaining to Bail Agents**

000. Legal Authority. ....	2
001. Title And Scope. ....	2
002. Written Interpretations. ....	2
003. Administrative Appeals. ....	2
004. Incorporation By Reference. ....	2
005. Office -- Office Hours -- Mailing Address, Street Address And Web Address. .	2
006. Public Records Compliance. ....	2
007. -- 011. (Reserved). ....	2
012. Notification Requirements. ....	2
013. Criminal History Checks. ....	3
014. Stacking Of Bonds Prohibited. ....	3
015. Notification To Surety Of Forfeiture. ....	3
016. Allowable Bail Agent Charges And Fees. ....	3
017. Bail Agent Financing Of Bail Bond Premiums. ....	4
018. Payment Of Forfeiture. ....	4
019. Severability. ....	4
020. -- 999. (Reserved) ....	4

**IDAPA 18  
TITLE 01  
CHAPTER 04**

**18.01.04 - RULES PERTAINING TO BAIL AGENTS**

**000. LEGAL AUTHORITY.**

This rule is promulgated pursuant to the authority vested in the director under Sections 41-211 and 41-1037 through 41-1045, Idaho Code. (4-7-11)

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.04, "Rules Pertaining to Bail Agents." (4-7-11)

**02. Scope.** The provisions of this rule shall apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the department and provisions of title 41, Idaho Code, applicable to insurance producers shall also apply to bail agents. (4-7-11)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (4-7-11)

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General - General provisions." (4-7-11)

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference. (4-7-11)

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (4-7-11)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-7-11)

**03 Street Address.** The principal place of business is 700 West State Street, 3<sup>rd</sup> Floor, Boise, ID 83720-0043. (4-7-11)

**04. Web Site Address.** The department's website is <http://www.doi.idaho.gov>. (4-7-11)

**006. PUBLIC RECORDS COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (4-7-11)

**007. -- 011. (RESERVED).**

**012. NOTIFICATION REQUIREMENTS.**

**01. Notice of Changes Required.** A bail agent licensed pursuant to Section 41-1039, Idaho Code, shall immediately notify the Department of Insurance in writing of any the following: (4-7-11)



- a. Change of bail agent's name; (4-7-11)
- b. Change of bail agent's current business address; (4-7-11)
- c. Change of bail agent's current business phone number or business e-mail address if any; (4-7-11)
- d. Change of name or address of any surety insurance company for which the bail agent has an active appointment; (4-7-11)
- e. Cancellation by a surety insurance company of a bail agent's authority to write bonds for that company; (4-7-11)
- f. Any new affiliation with a bail bond agency; (4-7-11)
- g. Cancellation of a bail agent's affiliation with a bail agency; (4-7-11)

**02. Notice of Legal Proceedings Required.** A bail agent shall provide immediate written notice to the Department of Insurance of the filing of any criminal charges against the bail agent. In addition to the foregoing, a bail agent shall provide immediate written notice to the Department of Insurance of any material change in circumstances that would require a different answer than previously provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration. Upon request by the department, the bail agent shall provide copies of all relevant legal documents relating to the matter and any additional relevant information requested. (4-7-11)

**013. CRIMINAL HISTORY CHECKS.**

**01. Criminal History Check Required.** All licensed bail agents must obtain a criminal history records check in connection with the renewal of a bail agent's license and shall bear all costs associated with the records check. (4-7-11)

**02. Grounds for Immediate Suspension.** For the purpose of determining whether grounds for immediate suspension of a bail agent's license exist under Section 41-1039(4), Idaho Code, a withheld judgment or a plea of nolo contendere shall be considered the same as a conviction or guilty plea. (4-7-11)

**014. STACKING OF BONDS PROHIBITED.**

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power shall be equal to or greater than the amount of the bail or bond set by the court in the case for which the bond and power are being submitted. A bail agent shall not attempt to "stack" bonds or powers by submitting more than one (1) power of attorney for any single bond. (4-7-11)

**015. NOTIFICATION TO SURETY OF FORFEITURE.**

A bail agent shall notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court. (4-7-11)

**016. ALLOWABLE BAIL AGENT CHARGES AND FEES.**

**01. Charges for Bail Transaction.** A bail agent shall not directly or indirectly impose or seek to impose any fees or charges except for those permitted under Section 41-1042, Idaho Code, as a part of any application, issuance, effectuation or continuation of a bail bond. (4-7-11)

**02. Charges for Additional Services.** Charges and fees outside the scope of Section 41-1042, Idaho Code, such as charges for returning a defendant to custody after a breach of the bail bond contract, must be negotiated separately after the bail bond has been effectuated. Negotiations for additional charges shall not be entered into as a part of the application, issuance and effectuation of a bail bond and shall not be a condition of or requirement for entering into or continuing a bail bond contract. Any fees or charges that are negotiated separately shall be reasonable in relation to the expenses or services for which the fee or charge is imposed and must be accompanied by a statement that clearly explains that any agreement to pay fees or charges is not a requirement or condition to the validity of the

existing bail bond. (4-7-11)

**03. Collateral.** Except as provided in Section 017.03 of this rule, collateral accepted in connection with the bail bond transaction shall be used solely for reimbursement of penal amounts paid to the courts in the case of forfeiture of the bail bond. (4-7-11)

**017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.**

**01. Written Agreement Required.** No credit may be extended by any bail agent or surety insurance company for the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium must contain at a minimum the following: (4-7-11)

- a. The names of the parties to the credit agreement; (4-7-11)
- b. The amount of premium financed; (4-7-11)
- c. The per annum rate of interest; (4-7-11)
- d. The scheduled premium payment dates; and (4-7-11)
- e. Signatures and dates of signatures of all parties to the credit agreement. (4-7-11)

**02. Early Surrender for Failure to Pay.** If failure to pay premiums due under a credit arrangement may result in the early surrender of the defendant, that fact must be clearly set forth in the written credit agreement. Early surrender for failure to make premium or interest payments when due must be handled in accordance with Section 41-1044, Idaho Code, and neither the bail agent nor the surety shall be entitled to seek recovery of any amounts unpaid as of the date of surrender. (4-7-11)

**03. Collateral for Credit Agreement.** If the credit agreement is to be collateralized, the collateral must not be excessive in relation to the amount of premium financed, must be separate and apart from any collateral used in the bail bond transaction, must be described in the credit agreement or in an attachment to the agreement, and must be handled in accordance with Section 41-1043, Idaho Code. (4-7-11)

**018. PAYMENT OF FORFEITURE.**

It is a violation of Section 41-1329(6), Idaho Code, for a bail surety to intentionally, or with such frequency as to indicate a general business practice, fail to pay a claim for forfeiture after liability for payment has become reasonably clear. Liability for payment upon forfeiture is reasonably clear when a defendant has not appeared or has not been brought before the court within one hundred eighty (180) days after the entry of the order of forfeiture, or a motion to set aside the forfeiture, in whole or in part, has not been filed with the court within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture pursuant to the Idaho Bail Act. (4-7-11)

**019. SEVERABILITY.**

If any provision of this Rule is for any reason held to be invalid, the remainder of the Rule shall not be affected thereby. (4-7-11)

**020. -- 999. (RESERVED)**

# ***Subject Index***

## **A**

Allowable Bail Agent Charges &  
Fees 3

## **B**

Bail Agent Financing Of Bail Bond  
Premiums 4

## **C**

Charges for Additional Services 3  
Charges for Bail Transaction 3  
Collateral 4  
Collateral for Credit Agreement 4  
Criminal History Check Required 3  
Criminal History Checks 3

## **E**

Early Surrender for Failure to Pay 4

## **G**

Grounds for Immediate Suspension 3

## **N**

Notice of Changes Required 2  
Notice of Legal Proceedings  
Required 3  
Notification Requirements 2  
Notification To Surety Of Forfeiture 3

## **P**

Payment Of Forfeiture 4

## **S**

Stacking Of Bonds Prohibited 3

## **W**

Written Agreement Required 4